IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2301 OF 2004

IN

SUIT NO.776 OF 1997

...

Goel Bros (Wood Work) Pvt. Ltd. ...Plaintiff

v/s.

New India Insurance Co. Ltd. ...Defendant

...

Mr.D.D. Madon i/b Thakore Jariwala & Associates for the Plaintiff.

Mr.J.P. Sen i/b Desai & Diwanji for Defendant.

...

CORAM: D.K.DESHMUKH, J.

DATED: 16TH JUNE,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiff for referring the parties to Arbitration, Conciliation or judicial settlement under Section 89 of the Civil Procedure Code. Perusal of the provisions of Section 89 shows that the order under that Section can be made by the court if the court is satisfied that there is an element of settlement.

2. So far as that aspect of the matter is concerned, only averments to be found on record are contained in paragraph 7 of the affidavit filed in support of the Notice of Motion, which reads as under:-

> "I say that in fact, in the course of various meeting prior to the filing of the suit 50% of the amount had been offered by

> the Insurance Company as settlement. I thus say that there exists a possibility of settlement in the matter. In any event, I say and submit that the Plaintiff’s claim is an admitted claim."

3. In reply filed by the Defendant all the averments made in paragraph 7 have been denied. The reply is to be found in paragraph 12 of the reply, which reads as under:-

> "With reference to para 7 of the said Affidavit, I deny that in the course of various meetings prior to the filing of the suit, the Defendants had offered 50% of the amount by way of settlement as alleged or at all. I deny that there is any possibility of the settlement in the matter as alleged or at all. I deny that the Plaintiffs’ claim is an admitted claim as alleged or at all. It is significant to note that the Plaintiffs have not even produced any scrap of paper in support of their said allegations."

4. In view of the denial by the Defendant of there being any offer made by the Defendant, in the absence of any documentary evidence or other evidence, it is not possible for me to record a satisfaction that there is an element of settlement in the matter. The notice of motion, therefore, cannot be granted. It is disposed of.

...